

Before; R. N. Mittal, J.

UNION TERRITORY OF CHANDIGARH AND ANOTHER,—  
Petitioners

versus

V. K. KHANNA AND OTHERS,—Respondents.

Civil Revision No. 765 of 1984

May 21, 1984

*Code of Civil Procedure (V of 1908)—Section 80 and Order 39 Rules 1 and 2—Suit filed by plaintiff without serving notice as provided by Section 80—Application also filed by plaintiff for ad-interim injunction—Such application dismissed as infructuous on statements of defendant's counsel—Plaint—Whether must be returned for presentation after serving notice under section 80.*

*Held*, that in view of sub-section (1) section 80 of the Code of Civil Procedure no suit can be filed against the Government or a public officer unless two months notice has been served on such Government or public officer. Sub-section (2) carves out an exception to the said rule and it empowers a court to allow a person to institute a suit without serving any notice under sub-section (1) in case it finds that the suit is for the purpose of obtaining an urgent and immediate relief against the Government or a public officer. However, the court cannot grant the relief under the sub-section unless a reasonable opportunity is given to the Government or public officer to show cause in respect of the relief prayed for. The proviso says that in case the Court is of the opinion that no urgent or immediate relief should be granted, it should return the plaint for presentation after complying with the requirements of sub-section (1). The amendment in the section was made in 1976 with a view to provide a remedy for obtaining an urgent and immediate relief against the Government or public officer without serving notice as prior to the amendment a person was without a remedy in case he required such relief. The provisions of sub-section (2) are mandatory. Therefore, when the court comes to the conclusion that the plaintiff cannot be given the relief claimed under order 39, rules 1 and 2 it would be incumbent upon it to return the plaint with the direction that it should be presented after serving notice as required by sub-section (1) of section 80 of the Code.

(Paras 6 & 7).

*Revision under section 115, C.P.C., from the order of the Court of Shri B. C. Gupta, Sub-Judge, 1st Class, Chandigarh, dated 25th January, 1984, dismissing the application of defendant Nos. 1 to 3, 6 to 10 and 12.*

Ashok Bhan, Senior Advocate, with A. K. Mittal, Advocate, for the Petitioner.

J. S. Chahal, Advocate, for No. 1, Deepak Thapar, Advocate, for No. 9.

## JUDGMENT

R. N. Mittal, J.

(1) This revision petition is directed against the order of the Subordinate Judge, 1st Class, Chandigarh, dated 25th January, 1984.

(2) Briefly the facts are that the plaintiff is a member of the Punjab Cadre of Indian Administrative Service. He was posted in Chandigarh in March, 1982 as Commissioner and Secretary to Government, Punjab and since then he has been continuously posted there. He is drawing emoluments exceeding Rs. 2,000 per mensem. It is alleged that he is entitled to type IV house under the Government Residences (Chandigarh Administration Pool) Allotment Rules, 1972 (hereinafter referred to as the Rules). Under the Rules a House Allotment Committee (Upper) has been constituted under the chairmanship of defendant No. 2 and it comprises of defendants Nos. 4 to 9 in addition to the said defendant. The Committee allots houses of type III to VIII. It is alleged that defendant No. 2 in disregard of the Rules had been making allotment of the houses on out-of-turn basis.

(3) House No. 57 in Sector 5, Chandigarh (which is type IV house) was vacated by Shri O. P. Malhotra, Chief Engineer, Chandigarh. It was allotted out-of-turn to Shri M. C. Gupta, Commissioner and Secretary to Government, Haryana, defendant No. 11 though he was not entitled to the house. It was consequently prayed that defendant No. 2 be restrained from making out-of-turn allotment of Government houses on *ad hoc* basis in arbitrary manner and defendants Nos. 1 to 10 be restrained from handing over possession of house No. 57 in Sector 5 to Shri Gupta.

(4) Along with the suit the plaintiff filed an application under Order XXXIX rules 1 and 2 of the Code of Civil Procedure (hereinafter called 'the Code') praying that defendants Nos. 1 to 10 and 12 be restrained from handing over the possession of the house to defendant No. 11 and that defendant No. 11 be restrained from taking possession of the said house till the decision of the suit. The Court issued notice for 21st November, 1983 of the application to defendants Nos. 1 to 10 and 12 and injunction against defendant No. 11 restraining him from taking possession of the house till further orders. On 21st November, 1983, the Government Pleader made some statement in the Court on account of which the said

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application became infructuous and was dismissed as such. Thereafter an application was moved on behalf of the defendants that the application moved on behalf of the plaintiff for *ad-interim* injunction against the defendants had been dismissed and, therefore, the plaint be returned for presentation to the Court after complying with the requirements of sub-section (1) of section 80 of the Code. The application was contested by the plaintiff who *inter alia* pleaded that the Court had dispensed with the service of the notice under section 80 and the matter cannot be agitated again at this stage. The Court dismissed the application,—*vide* the impugned order. Three of the defendants have come up in revision against that order to this Court.

(5) The only question that arises for determination is whether the plaint should be returned to the plaintiff for presentation to the Court after complying with the requirements of sub-section (1) of section 80. The question involves interpretation of sub-sections (1) and (2) of section 80 of the Code, which read as follows:—

“80 (1) Save as otherwise provided in sub-section (2), no suit shall be instituted against the Government (including the Government of the State of Jammu and Kashmir) or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been delivered to, or left at the office of

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(2) A suit to obtain an urgent or immediate relief against the Government (including the Government of the State of Jammu and Kashmir) or any public officer in respect of any act purporting to be done by such public officer in his official capacity, may be instituted, with the leave of the Court, without serving any notice as required by sub-section (1); but the Court shall not grant relief in the suit, whether interim or otherwise, except after giving to the Government or public officer, as the case may be, a reasonable opportunity of showing cause in respect of the relief prayed for in the suit;

Provided that the Court shall, if it is satisfied, after hearing the parties, that no urgent or immediate relief need be

granted in the suit, return the plaint for presentation to it after complying with the requirements of sub-section (1).

(6) From a reading of sub-section (1) it is evident that no suit can be filed against the Government or a public officer unless two months notice has been served on such Government or public officer. Sub-section (2) carves out an exception to the said rule and it empowers a court to allow a person to institute a suit without serving any notice under sub-section (1) in case it finds that the suit is for the purpose of obtaining an urgent and immediate relief against the Government or a public officer. However, the Court cannot grant the relief under the sub-section unless a reasonable opportunity is given to the Government or public officer to show cause in respect of the relief prayed for. The proviso says that in case the Court is of the opinion that no urgent or immediate relief should be granted, it should return the plaint for presentation after complying with the requirements of sub-section (1). The amendment in the section was made in 1976 with a view to provide a remedy for obtaining an urgent and immediate relief against the Government or public officer without serving notice as prior to the amendment a person was without a remedy in case he required such relief. The provisions of sub-section (2) are mandatory.

In the above said view I am fortified by the observations of the Gauhati High Court in *State of Tripura and others v. Sajal Kanti Sengupta* (1), wherein it was observed :—

“The clear mandate couched in these provisions is that if an urgent or immediate relief has to be given to the plaintiff the provisions of sub-section (1) of section 80, C.P.C. can be presently dispensed with; but if after hearing both parties the Court comes to the finding that no urgent or immediate relief need be granted in the suit, the plaint will be returned for compliance with the requirements of sub-section (1). It is, therefore, found that even in the matter of an urgent or immediate relief interim or otherwise the Court cannot dispense with giving an opportunity of showing cause in respect of the relief prayed for in the suit to the other party. The provision is mandatory and it cannot be bypassed inasmuch as the urgency/immediacy

(1) A.I.R. 1982 Gauhati 76.

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of the relief, interim or otherwise, are sufficiently dealt with under the provisions.”

(7) Adverting to the facts of the present case it is clear that the Court came to the conclusion that the plaintiff could not be given the relief claimed by him under sub-section (2). It was, therefore, incumbent upon it to return the plaint to the plaintiff under the proviso with a direction that it should be presented after serving notice as required by sub-section (1). In my view, the trial Court has not interpreted sub-section (2) of section 80 correctly. Consequently I accept the revision petition, set aside the order of the trial Court and direct it to return the plaint to the plaintiff for presenting the same after complying with the requirements of sub-section (1) of section 80 of the Code. No order as to costs.

H. S. B.

Before; Prem Chand Jain, A.C.J. & J. M. Tandon, J.

BABU RAM AND OTHERS,—Petitioners.

versus

THE STATE OF HARYANA AND OTHERS,—Respondents.

C.W.P. No. 7208 of 1976

May 29, 1984

*Haryana General Sales Tax Act (20 of 1973)—Section 38—Haryana General Sales Tax Rules, 1975—Rule 53—Constitution of India 1950—Article 246(3) and Entry 54 of List II of Seventh Schedule—Clearing/forwarding agents rendering services for booking/taking delivery of consignments on behalf of their clients on payment of remuneration—Section 38 requiring such agents to take out a licence and to furnish prescribed information of goods handled by them—Penalty provided for contravention of the provisions—Section 38 and Rule 53—Whether ultra vires the powers of the State Legislature.*

*Held, that the Legislature is competent to legislate with respect to matters incidental and ancillary to the main provision subject to the condition that they relate to the powers otherwise conferred by the primary head of the Schedule. Incidental and ancillary power*